



This document is scheduled to be published in the
Federal Register on 11/01/2011 and available online
at
<http://federalregister.gov/a/2011-28189>.

9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 135 and 136

[USCG-2004-17697]

RIN 1625-AA03

Claims Procedures Under the Oil Pollution Act of 1990

AGENCY: Coast Guard, DHS.

ACTION: Notice of Inquiry.

SUMMARY: The Coast Guard is developing a supplemental notice of proposed rulemaking (SNPRM) to finalize a 1992 interim rule that set forth the Oil Pollution Act of 1990 (OPA'90) claims procedures and removed certain conflicting and superseded regulations from the Code of Federal Regulations. Before publishing the SNPRM, the Coast Guard is inviting members of the public to respond to questions and offer comments on their experience to date with the OPA'90 claims procedures and on whether additional pre-OPA'90 rules should be removed from the Code of Federal Regulations. The Coast Guard is also inviting the public to provide background information and cost data that will better inform the regulatory assessment for this rulemaking.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2004-17697 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION

section below for additional instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail Benjamin H. White, National Pollution Funds Center, U.S. Coast Guard, telephone (202) 493-6863, e-mail Benjamin.H.White@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Abbreviations
- II. Public Participation and Request for Comments
 - A. Submitting comments
 - B. Viewing the comments and supplemental materials in the public docket
 - C. Privacy Act
- III. Background
 - A. Overview of the OPA'90 liability and compensation statutory scheme
 - B. Repeal by OPA'90 of Title III of the Outer Continental Shelf Lands Act Amendments of 1978
 - C. Regulatory history
 - 1. *Interim Rule*
 - a. *OPA'90 Claims Procedures*
 - b. *OCSLAA Rule amendments*
 - 2. *1992 Comments on the Interim Rule*
 - 3. *Subsequent corrections, amendments and rulemakings*
- IV. Purpose of the Notice of Inquiry
 - A. Scope of the Notice of Inquiry

- B. Some of the 1992 Comments will not need to be addressed further in this rulemaking
- C. Information we would like you to include in your comments
- D. How to use the comment matrices
- V. Notice of Inquiry Questions
 - A. Question concerning your interest in the rulemaking
 - B. Questions concerning the 1992 Comments on the Interim Rule
 - C. Questions concerning the Claims Procedures (33 CFR part 136)
 - 1. *Rule organization and other clarifications to the Claims Procedures*
 - 2. *Claims Procedures regulatory deadlines*
 - 3. *Claims submission requirements*
 - 4. *Claims determination and reconsideration procedures*
 - 5. *Distinguishing the different categories of claims due to injury, loss or destruction to, or loss of use of, natural resources*
 - 6. *The public notice and comment exception for certain natural resource damage trustee claims*
 - 7. *Damage assessment costs*
 - 8. *Other comments on the Claims Procedures for different categories of claims*
 - 9. *Source designations and claims advertising*
 - D. Questions concerning removal of the OCSLAA Rule (33 CFR part 135)
 - E. Questions concerning the regulatory analysis for this rulemaking
 - 1. *Claims Procedures (33 CFR part 136) - Economic Analysis.*
 - 2. *Claims Procedures (33 CFR part 136) - Small Entities Analysis.*
 - 3. *Removal of the OCSLAA Rule (33 CFR part 135) - Economic Analysis.*
 - 4. *Removal of the OCSLAA Rule (33 CFR part 135) - Small Entities Analysis.*
 - F. Other issues

I. Abbreviations

1992 Comments	The public comments on the Interim Rule, submitted during and shortly after the 120-day public comment period that
---------------	--

	followed publication of the Interim Rule, all of which are posted on the public docket for this rulemaking
CFR	Code of Federal Regulations
Claims Procedures	The OPA'90 regulatory procedures for designating oil spill sources and denying oil spill source designations, advertising for claims, and presenting, filing, processing, settling, and adjudicating OPA'90 claims against the Oil Spill Liability Trust Fund, published at 33 CFR part 136, subparts A through D
Document #	The unique identifier number assigned by the Docket Management Facility to each document in the public docket for this rulemaking
E.O.	Federal Executive Order
FR	Federal Register
Fund or OSLTF	The Oil Spill Liability Trust Fund, established by 26 U.S.C. 9509
FWPCA	Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 (2010)
Interim Rule	The Coast Guard's interim rule, establishing the OPA'90 Claims Procedures (33 CFR part 136) and amending the OCSLAA Rule (33 CFR part 135) [57 FR 36316, August 12, 1992; 57 FR 41104, September 9, 1992 (correction)]
NAICS	North American Industry Classification System
NOI	Notice of Inquiry
NPFC	National Pollution Funds Center
OCS	Outer Continental Shelf
OCSLAA	Title III of the Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. 95-372, 92 Stat. 629 (previously codified at 43 U.S.C. 1811-1824; repealed August 18, 1990, by OPA'90 Section 2004 (26 U.S.C. 9509 note))
OSCLAA Fund	The Offshore Oil Spill Pollution Compensation Fund, established under OCSLAA Section 302 (previously codified at 43 U.S.C. 1812; terminated by OPA'90 Section 2004 (26 U.S.C. 9509 note))
OCSLAA Rule	The OCSLAA regulations, published at 33 CFR part 135

OPA'90	The Oil Pollution Act of 1990, Pub. L. 101-380, 104 Stat. 484 (August 18, 1990), as amended, Title I of which is codified at 33 U.S.C. 2701, <i>et seq.</i> (2010)
SNPRM	Supplemental notice of proposed rulemaking
U.S.C.	United States Code
USCG or Coast Guard	United States Coast Guard

II. Public Participation and Request for Comments

We encourage you to submit comments and related material on the Interim Rule and to respond to the questions included below in Part V of this Notice of Inquiry. All comments received will be posted, without change, to <http://www.regulations.gov>, and will include any personal information you have provided.

A. Submitting comments: If you submit a comment, please include the docket number for this notice (USCG-2004-17697) and provide a reason for each suggestion or recommendation. We recommend that you include your name and a mailing address, an e-mail address, and a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means.

To submit your comments online, go to

<http://www.regulations.gov> and type "USCG-2004-17697" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column and enter your comment. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Docket Management Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing the comments and supplemental materials in the public docket: The public docket for this rulemaking contains the Interim Rule, the public comments submitted immediately following publication of the Interim Rule (1992 Comments), any public comments submitted in response to this Notice of Inquiry, and other supplemental materials concerning this rulemaking. To view the public docket for this rulemaking online go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2004-17697" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

III. Background

The Coast Guard is developing a supplemental notice of proposed rulemaking (SNPRM) that will propose amendments to a 1992 interim rule, titled "Claims Under the Oil Pollution Act of 1990" (Interim Rule, 57 FR 36316, August 12, 1992; 57 FR 41104, September 9, 1992 (correction)). The Interim Rule established new procedures under Title I of the Oil Pollution Act of 1990 (OPA'90) (33 U.S.C. 2701, *et seq.*),

at Title 33 of the Code of Federal Regulations (CFR) part 136, for designating oil spill sources, denying source designations, advertising for claims, and presenting, filing, processing, settling, and adjudicating claims against the Oil Spill Liability Trust Fund (Claims Procedures). As explained further below, the Interim Rule also removed from the Code of Federal Regulations certain conflicting and superseded regulations that had been established under provisions of Federal law that were later revoked by OPA'90.

A 120-day public comment period followed publication of the Interim Rule, and the public will have an opportunity to comment again on this rulemaking during the public comment period that will follow our publication of the SNPRM. Before publishing the SNPRM, however, the Coast Guard believes that additional input from interested members of the public would be very useful. This input will help the Coast Guard review the Interim Rule as it has been implemented since 1992, to determine whether the rule can be better tailored or streamlined to improve its effectiveness and reduce burden on the public.

The Coast Guard is particularly interested in hearing the public's views of the Interim Rule based on the public's years of experience with the Claims Procedures,

including recent experience arising from the 2010 DEEPWATER HORIZON spill of national significance. The Coast Guard, therefore, invites you to comment on the Interim Rule and the 1992 Comments, based on your experience, and to respond to the other questions concerning this rulemaking set forth below in Part V of this Notice of Inquiry.

The following statutory overview and regulatory background is provided to help you respond to this Notice of Inquiry.

A. Overview of the OPA'90 liability and compensation statutory scheme: Under Title I of OPA'90, the responsible parties for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States, are strictly liable, jointly and severally, for the resulting oil removal costs and six categories of damages specified in OPA'90 (33 U.S.C. 2702(b)), up to the applicable OPA'90 limit of liability.¹

In addition, under OPA'90 (33 U.S.C. 2714), when an oil spill incident occurs, the President (acting through a

¹The OPA'90 limits of liability, if they apply (see exceptions in 33 U.S.C. 2704(c)), can be found in 33 CFR part 138, subpart B for vessels and deepwater ports, and 33 U.S.C. 2704(a)(3) and (4) for offshore and onshore facilities. The limits of liability are subject to adjustment by regulation as provided under 33 U.S.C. 2704(d).

Federal official) designates the source or sources of the discharge or threat, where possible and appropriate. If the source is a vessel or facility, the Federal official also notifies the responsible party and guarantor, if known, of the source designation. Thereafter, unless the responsible party or guarantor denies the source designation within 5 days after receiving the notice of designation, the responsible party or guarantor must begin advertising the source designation and the procedures for presenting claims for OPA'90 removal costs or damages. The advertisement must begin by no later than 15 days after the date of the source designation.

Under certain circumstances, including if the responsible party and the guarantor both deny the source designation within 5 days after receiving the notice of designation, or fail to advertise, or if the Federal official is unable to designate the source or sources of the discharge or threat, the President (acting through the U.S. Coast Guard, National Pollution Funds Center (NPFC)) advertises or otherwise notifies potential claimants of the procedures by which claims for uncompensated OPA'90 removal costs and damages may be presented either to the responsible party or guarantor, or to the NPFC for payment by the Oil Spill Liability Trust Fund (the OSLTF or Fund).

(See 33 U.S.C. 2714(c).)

OPA'90 also specifies the procedures claimants must follow to seek compensation for their removal costs and damages. OPA'90 (33 U.S.C. 2713(a)) provides that "Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title."² Thereafter, if the claim is denied by each person to whom the claim is presented (e.g., the responsible party or guarantor), or the claim is not settled by any person by payment within 90 days after the date the claim was presented or advertising was begun, whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present a claim for the uncompensated removal costs and damages to the Fund. (33 U.S.C. 2713(c) and (d)).

These provisions of OPA'90 preserve the concept that

² Under OPA'90 (33 U.S.C. 2713(b)(1)) claims may be presented first to the Fund in four cases:

(A) if the President has advertised or otherwise notified claimants in accordance with section 2714(c) of this title;

(B) by a responsible party who may assert a claim under section 2708 of this title;

(C) by the Governor of a State for removal costs incurred by that State; or

(D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 2712(a) of this title.

those responsible for an oil pollution incident have the primary duty to respond to claims for OPA'90 removal costs and damages resulting from the incident. They impose an obligation on the responsible party (or guarantor) to advertise for and pay OPA'90 removal cost and damage claims, and afford claimants additional judicial and administrative remedies when the responsible party (or guarantor) does not pay a claim.

OPA'90 also prohibits double recovery by claimants and preserves the ability of the United States to seek to recover amounts paid by the Fund to claimants. Several sections of OPA'90 speak to these protections.

First, under OPA'90 (33 U.S.C. 2712(a)(4) and 2713(d)), claims may only be presented to, and paid by, the Fund for "uncompensated" removal costs and damages. Claimants thus bear the burden to demonstrate that their claimed removal costs and damages are uncompensated. In addition, OPA'90 (33 U.S.C. 2706(d)(3)) prohibits double recovery by trustees of natural resource damages for the same incident and natural resources. Similarly, OPA'90 (33 U.S.C. 2712(i)) prohibits double payment of claims from the Fund, stating that "In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a) of this section, no

other claim may be paid from the Fund for the same removal costs or damages."

OPA'90 (33 U.S.C. 2712(f)) also provides that "Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party." In addition, OPA'90 (33 U.S.C. 2713(b)(2)) states that "No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim." Finally, OPA'90 (33 U.S.C. 2715(a)) provides that "Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law." Under OPA'90 (33 U.S.C. 2715(c)), the United States may, thereafter, recover not only the compensation paid to claimants, but also all costs incurred by the Fund by reason of the claim, including interest, administrative and adjudicative costs, and attorney's fees.

OPA'90 (33 U.S.C. 2713(e) and 33 U.S.C. 2714(b)) requires that the procedures for advertising source designations and for presenting, filing, processing,

settling, and adjudicating claims against the Fund, be established by regulation. This rulemaking focuses on those rulemaking requirements, which have been implemented at 33 CFR part 136 (Claims Procedures).

B. Repeal by OPA'90 of Title III of The Outer Continental Shelf Lands Act Amendments of 1978: In addition to establishing a new liability and compensation scheme, OPA'90 repealed a patchwork of earlier Federal oil spill laws, among them Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (hereafter OCSLAA).

OCSLAA had established an oil spill liability, compensation and financial responsibility regime for the Outer Continental Shelf (OCS) that was later mirrored in Title I of OPA'90. OCSLAA also contained OCS oil spill incident notification and penalty provisions similar to those in the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(b)), as amended by OPA'90, and provisions for funding and managing a predecessor fund to the OSLTF, known as the Offshore Oil Spill Pollution Compensation Fund (OCSLAA Fund). These OCSLAA provisions were implemented by Coast Guard regulations at 33 CFR part 135 (OCSLAA Rule).

OPA'90 Section 2004 (26 U.S.C. 9509 note) repealed OCSLAA, providing that: "Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C.

1811-1824) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund Established under section 302 of that title (43 U.S.C. 1812) shall be deposited in the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509). The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund." (See 26 U.S.C. 9509 note.) This provision of OPA'90 effectively revoked the legal authority for the OCSLAA Rule.

OPA'90 (33 U.S.C. 2751(b)), however, preserved the legal effect of certain regulations established under laws replaced by OPA'90 until repealed, amended, or superseded. In addition, OPA'90 (33 U.S.C. 2716(h)) expressly preserved the legal force and effect of the OCSLAA Rule's evidence of financial responsibility provisions, at 33 CFR part 135, subpart C, until the requirements were superseded by new evidence of financial responsibility regulations mandated by OPA'90 (33 U.S.C. 2716(e)). (The OPA'90 financial responsibility provisions require responsible parties for certain vessels, deepwater ports and offshore facilities to establish and maintain evidence of financial responsibility, up to the applicable OPA'90 limit of liability.)

C. Regulatory history:

1. Interim Rule - On October 18, 1991, the President issued Executive Order (E.O.) 12777, delegating the President's OPA'90 regulatory authorities. (56 FR 54757, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p. 166). The delegations include OPA'90 delegations to "the Secretary of the department in which the Coast Guard is operating" of the President's authorities to establish the OPA'90 Claims Procedures. (E.O. 12777, Sec. 7). In addition, E.O. 12777 Sec. 8(i) revoked the delegations for the OCSLAA Rule.

On August 12, 1992, the Coast Guard published the Interim Rule with request for comments, pursuant to this delegated authority. A copy of the Interim Rule is available in the public docket for this rulemaking (Document # USCG-2004-17697-0001). (Note that the docket number for this rulemaking referenced in the Interim Rule was CGD 91-035. The docket for this rulemaking was transferred in 2004 to a new docket system, and re-numbered USCG-2004-17697.)

a. OPA'90 Claims Procedures. The Interim Rule established the OPA'90 Claims Procedures required by OPA'90 (33 U.S.C. 2713(e) and 2714(b)), at 33 CFR part 136, subparts A through D. Subpart A of the Claims Procedures

sets forth general provisions. Subpart D of the Claims Procedures implements the OPA'90 (33 U.S.C. 2714) requirements concerning designation of the source or sources of a discharge, or threat of discharge, of oil, and the procedures for responsible parties (or their guarantors) to timely deny the source designation or advertise the source designation and the procedure by which claims may be presented.

Subparts B and C of the Claims Procedures set forth the OPA'90 (33 U.S.C. 2713) procedures for presenting, filing, processing, settling, and adjudicating OPA'90 claims for "uncompensated" removal costs and damages to the NPFC for payment by the Fund. The latter include claims that are properly presented first to the responsible party or guarantor of the source, but that are denied or not settled by payment within the 90-day period prescribed in OPA'90 (33 U.S.C. 2713(c)), and claims that are excepted by OPA'90 (33 U.S.C. 2713(b)) from the requirement to present claims first to the responsible party or guarantor.

The Claims Procedures prevent double recovery by claimants and preserve the ability of the United States to recover claims paid by the Fund. For example, the Claims Procedures require that a claim to the Fund be properly documented by the claimant, including documentation

sufficient for the NPFC to determine whether, and the extent to which, a claim is uncompensated. In addition, the Claims Procedures incorporate the OPA'90 (33 U.S.C. 2713(b)(2)) limitation on payment by the Fund of any claim pending in an action by the person in court (§ 136.103(d)); and require that the claimant's legal rights to recover against the responsible party be released to the Fund upon the Fund's payment of the claim.

We note that OPA'90 requires regulations setting forth the procedures for presenting claims to the Fund (33 U.S.C. 2713(e)), and the requirements for the responsible party or guarantor to advertise the source designation and the procedures by which claims may be presented (33 U.S.C. 2714(b)(1)). OPA'90 does not, however, authorize Federal regulation of the procedures the responsible parties and claimants must use to settle claims presented to responsible parties. Those procedures therefore are not covered by the Claims Procedures.

The OPA'90 and the Claims Procedures also do not address liability or compensation for oil removal costs or damages resulting from discharges or substantial threats of discharge of oil from public vessels, as defined by OPA'90. This is because the definition of "vessel" in OPA'90 (33 U.S.C. 2701(37)) expressly excludes "public vessels"

(defined in 33 U.S.C. 2701(29)) and OPA'90 expressly excludes "any discharge . . . from a public vessel" from the OPA'90 Title I liability and compensation provisions (33 U.S.C. 2702(c)).

b. OCSLAA Rule amendments. In addition to establishing the OPA'90 Claims Procedures, the Interim Rule amended the OCSLAA Rule, removing the oil spill source designation and claims advertising regulations from subpart D of the OCSLAA Rule (33 CFR part 135). These amendments were ministerial in nature and intended to remove obvious conflicts between the pre-OPA'90 regulations and the new OPA'90 source designation and advertising requirements in subpart D of the Claims Procedures (33 CFR part 136).³

2. 1992 Comments on the Interim Rule - The Coast Guard provided a 120-day opportunity for the public to comment on the Interim Rule following its publication, and received 28 comment letters, containing approximately 250 discrete comments on the Interim Rule (1992 Comments). To view the 1992 Comments, please refer to the instructions above for viewing documents posted to the public docket for this rulemaking (USCG-2004-17697), in the section titled

³ The Interim Rule similarly removed pre-OPA'90 claims procedures, at 33 CFR part 137, that had implemented provisions of the Deepwater Port Act of 1974 that were revoked by OPA'90 Section 2003. Part 137 of 33 CFR was later removed in its entirety from the Code of Federal Regulations (see 61 FR 9274, March 7, 1996), and is now used for a separate OPA'90 regulatory requirement not pertinent to this rulemaking.

"Public Participation and Request for Comments." We also have summarized the 1992 Comments in a document titled "1992 Comments Matrix", which also is available in the public docket for this rulemaking (Document # USCG-2004-17697-0032).

We note that the Docket Management Facility has designated the Interim Rule in the public docket as Document # USCG-2004-17697-0001. As a result, the public docket document number assigned to each of the 1992 Comments differs by one number. For example, "1992 Commenter 1" appears in the public docket for this rulemaking as Document # USCG-2004-17697-0002, "1992 Commenter 2" appears in the public docket as Document # USCG-2004-17697-0003, and so forth.

Three commenters expressed views concerning the Interim Rule's amendments to the OCSLAA Rule striking the OCSLAA source designation and advertising provisions from subpart D of the OCSLAA Rule. One commenter expressed support for the amendments. Another commenter noted that OCSLAA had been revoked, and expressed the view that the remaining provisions of the OCSLAA Rule included requirements that duplicate requirements under other law and should be removed from the Code of Federal Regulations. The third commenter expressed views concerning incident

notification requirements under the Federal Water Pollution Control Act (33 U.S.C. 1321(b)(4)) that are similar to the OCSLAA incident notification requirements in subpart D of the OCSLAA Rule.

A number of 1992 Comments expressed views about the OPA'90 statutory scheme generally, and about statutory authorities and regulatory issues that are not related to this rulemaking.

The remaining 1992 Comments concerned the OPA'90 Claims Procedures. Some commenters thought the Claims Procedures were generally reasonable and fair, and would ensure prompt, full and adequate recovery by claimants, to the extent authorized by OPA'90. Other 1992 Comments raised concerns about the wording of particular sections and how the Claims Procedures would be implemented.

3. Subsequent corrections, amendments and superseding rulemakings - The Coast Guard published a correction to the Interim Rule, and has since published a number of technical amendments to the OCSLAA Rule and the Claims Procedures.⁴

⁴ Technical corrections to the Interim Rule preamble and two sections of 33 CFR part 136: 57 FR 41104, September 9, 1992. Amendment to 33 CFR § 136.9 Falsification of claims, removing the dollar amount of possible civil penalties: 62 FR 16695, April 8, 1997. Amendments to the NPFC addresses referenced throughout 33 CFR part 136: 74 FR 441, June 10, 2009. Amendments to the addresses referenced in OCSLAA Rule §§ 135.9 and 135.305 of the: 63 FR 35530, June 30, 1998, 71 FR 39209, July 12, 2006, 72 FR 36328, July 2, 2007, 73 FR 35013, July 19, 2008, 74 FR 27440, June 10, 2009. Amendment to 33 CFR § 135.103(b) to reflect an organizational name change from the Minerals Management Service to the

To date, however, the Coast Guard has not published substantive changes to the Claims Procedures or further amended the OCSLAA Rule based on the 1992 Comments.

Several rulemakings have, however, effectively superseded the remaining provisions of the OCSLAA Rule.

For example:

- As contemplated by OPA'90 (33 U.S.C. 2716), the Coast Guard published OPA'90 vessel evidence of financial responsibility regulations at 33 CFR part 138 ("Financial Responsibility for Water Pollution (Vessels)", 59 FR 34210, July 1, 1994 [interim rule] and 61 FR 9264, March 7, 1996 [final rule]), and the Minerals Management Service published OPA'90 offshore facility evidence of financial responsibility regulations at 30 CFR part 253 ("Oil Spill Financial Responsibility for Offshore Facilities", 63 FR 42699, August 11, 1998). As provided in OPA'90 (33 U.S.C. 2716(h)), those regulations superseded the OCS financial responsibility requirements at subpart C of the OCSLAA Rule.
- The incident notification requirements in subpart D of the OCSLAA Rule appear to have been overtaken by Coast

Guard and Environmental Protection Agency regulations (33 CFR part 153, subpart B, and 40 CFR § 110.6, respectively). Those regulations implement the requirement in FWPCA (33 U.S.C. 1321(b)(5)) for persons in charge of a vessel or facility to report incidents prohibited under FWPCA (33 U.S.C. 1321(b)(3)).

- Subpart E of the OCSLAA Rule, concerning access to vessels subject to OCSLAA, production of their certificates of financial responsibility, and denial of entry and detention, appear to overlap, in part if not in whole, with 33 CFR § 138.140. Subpart E of the OCSLAA Rule also appears to have been overtaken by implementation of the 2008 amendments to 33 CFR part 138, which eliminated paper certificates of financial responsibility.

Similarly, subparts A and B of the OCSLAA Rule, concerning management of the OCSLAA Fund, have been overtaken by events. In particular, OPA'90 Section 2004 (26 U.S.C. 9509 note) terminated and transferred the balance of the OCSLAA Fund to the OSLTF, and all outstanding claims to that OCSLAA Fund have long since been adjudicated.

IV. Purpose of the Notice of Inquiry

The OPA'90 Claims Procedures have now been in effect for over 19 years as an Interim Rule, and have proven adequate. For example, between August 12, 1992, when the Claims Procedures were first promulgated, and October 26, 2011, the NPFC adjudicated 13,066 claims, with resulting payments from the Fund of \$414,212,615.

The Coast Guard recognizes that the Claims Procedures could be amended to address regulatory gaps, and that certain of its provisions could be clarified. Moreover, as previously mentioned, the OCSLAA Rule's remaining provisions appear to have been effectively superseded or overtaken by other regulations. The Coast Guard is, therefore, considering removing the OCSLAA Rule and reserving 33 CFR part 135.

The Coast Guard has considered all of the 1992 Comments on the Interim Rule, but recognizes that some of the 1992 Comments concerned legal issues that have since been resolved, and others may have resulted from the public's lack of experience with the Claims Procedures at the time. Therefore, before publishing a SNPRM to amend the Claims Procedures, we would like to know what the public's views are of the Claims Procedures, based on the experience gained over the years since they were published. We also would like to know the public's views on whether

the remaining provisions of the OCSLAA Rule should be removed from the Code of Federal Regulations. Finally, we would like current information from the public that will help us conduct the regulatory assessments required for this rulemaking.

This notice of inquiry is consistent with Executive Order 12866, as supplemented by Executive Order 13563, in that it seeks public comments on the burden and effectiveness of the existing regulations, so that the Coast Guard may consider how best to tailor or streamline the regulations.

A. Scope of the Notice of Inquiry: The questions in Part V of this Notice of Inquiry invite you to comment on the 1992 Comments, on your experience with the OPA'90 Claims Procedures, on removal of the OCSLAA Rule from the Code of Federal Regulations, and on regulatory analysis issues relevant to this rulemaking. These questions are not intended to be a comprehensive list of the subjects we may decide to address in the SNPRM, and you will have an opportunity to comment on any subjects not mentioned here during the public comment period that will follow our publication of the SNPRM.

Your responses to the questions in Part V of this Notice of Inquiry will, however, help us determine the

scope of the issues that may need to be addressed in this rulemaking and will inform us about ways we may be able to improve the OPA'90 Claims Procedures based on experience. For example, we want to ensure we know about issues that may not have been apparent in 1992 and were not raised in the 1992 Comments. Likewise, a number of the 1992 Comments asked questions about how the Coast Guard planned to implement the Claims Procedures. The Coast Guard does not want to propose changes to the Claims Procedures to address issues the public had in 1992 that the public believes are now well understood or have since been resolved through implementation of the Claims Procedures.

We are, therefore, interested in knowing whether, based on your experience, the issues raised in the 1992 Comments are still a concern, and whether other issues need to be addressed. For this reason, we invite you to address any or all of the questions in Part V of this Notice of Inquiry, and to submit comments on any other issues concerning this rulemaking that you would like to bring to our attention.

B. Some of the 1992 Comments will not need to be addressed further in this rulemaking: We have responded to some of the issues raised in the 1992 Comments, in Column C of the "1992 Comments Matrix", which is available in the

public docket for this rulemaking (Document # USCG-2004-17697-0032). We do not plan to revisit those issues in the future, and are not requesting further comment from you on those issues. Examples of the resolved issues include the following:

1. Some of the 1992 Comments expressed views about OPA'90 and other statutory and regulatory issues that are beyond the scope of this rulemaking.

2. Some of the 1992 Comments responded to a reference in the preamble of the Interim Rule (at 57 FR 36315, column 1), to then-pending questions regarding whether Federal, State and Indian tribe trustees can claim against the Fund for natural resource damages under OPA'90 (33 U.S.C. 2713). The United States subsequently resolved those issues, concluding that trustee claims may be paid using amounts available from the Fund for claims.

3. Some of the 1992 Comments requested amendments to the Claims Procedures that would be clearly contrary to OPA'90.

4. One of the 1992 Comments noted that a technical editorial correction was needed, replacing the word "Commander" in the last line of § 136.101(b) with the word "Director". This correction was made in a Federal Register notice published at 57 FR 41104 on September 9, 1992.

Another of the 1992 Comments pointed out a technical error in § 136.305(b)(3) that we are aware of and plan to address in the SNPRM.

5. Two 1992 Comments related to the Coast Guard's finding of "good cause" to make the interim rule immediately effective upon publication, under the Administrative Procedure Act (5 U.S.C. 553(b)(B) and (d)(3)). That finding was based on the need to make the OPA'90 Claims Procedures immediately available to those eligible to file a claim against the Fund. The Coast Guard provided the public a 120-day opportunity to comment on the Interim Rule following its publication, is providing an additional opportunity for public comment by publishing this Notice of Inquiry, and plans to provide an opportunity for further public comment when the SNPRM is published.

6. One of the 1992 Comments was a request to meet with the NPFC. The NPFC did not meet with the commenter and does not believe that meeting at this time would aid the rulemaking.

7. One of the 1992 Comments objected to submitting comments in triplicate. Commenters are no longer required to submit their comments in triplicate.

C. Information we would like you to include in your comments: When responding to the questions in Part V of

this Notice of Inquiry below, please identify your interest in the rulemaking. Please also identify the specific regulatory provision you are commenting on and, as applicable, identify each of the 1992 Comments you are commenting on and describe any issues not addressed in the 1992 Comments. Lastly, please describe your experience, including how any issues were resolved and how any remaining issues might be addressed through the rulemaking.

D. How to use the comment matrices: You may choose to submit your comments using any of the methods discussed in ADDRESSES, and in any of the formats discussed in the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section, including in a standard letter. In addition, to promote maximum public participation in this rulemaking and assist you in responding to the questions in Part V of this Notice of Inquiry, we have provided two downloadable Excel format matrix documents in the public docket for this rulemaking (USCG-2004-17697) that you may choose to use to provide your comments, and we encourage you to do so.⁵

⁵ If you do not have Microsoft Office on your computer, libreoffice.org, openoffice.org and other groups offer free office suites that you may wish to download to your computer. Many of these suites run on Windows, Mac OS and Linux operating systems and include programs that can open and edit MS Excel documents. Your local public library may also have computers for the public's use that are equipped with Excel or other compatible software.

The documents are titled: "1992 Comments Matrix" (Document # USCG-2004-17697-0032) and "NOI Questions Matrix" (Document # USCG-2004-17697-0033). You may access the matrix documents as follows:

- (1) Go to <http://www.regulations.gov>.
- (2) Enter the docket number of this rulemaking (USCG-2004-17697) in box titled "Enter Keyword or ID" and click the box labeled "Search".
- (3) In the search results page, check the "Rulemaking" box under "Docket Type".
- (4) Further down on the page, select the "View by Relevance" tab.
- (5) You may sort (or reverse sort) the listed documents by document ID number by clicking on the document "ID" column.
- (6) Scroll to the document you want to view, and click on the link for the document. This will take you to the Document Details page for the document you want to view.
- (7) On the right side of the "Attachments" box on the Document Details page select the XLS icon.

To comment using a matrix document, please first download the document to your computer, and save the document with a unique file name in Excel 97-2003 Workbook

(*xls) format. For example, after downloading the "NOI Questions Matrix", please go to "save as" on your computer, give the document a unique file name such as "NOI Questions Matrix - ABC Company Comments", and select Excel 97-2003 Workbook (*.xls) in the document "save as type" drop down.⁶ (If your comments are anonymous, you may save the document as "NOI Questions Matrix - Anonymous Comments".)

After saving the matrix document with a unique name, you may add your comments and contact information in the columns and cells provided, as follows:

1. In the document titled "NOI Questions Matrix", the Notice of Inquiry questions appear in Column A. You may use Column B to provide your answers to the questions asked in Part V of this Notice of Inquiry, and Column C to provide your (optional) contact information and to specify the interest group you belong to, or represent (see question 1, in Part V below.)

2. In the document titled "1992 Comments Matrix", the 1992 Comments are summarized in Column A, and Column B provides the 1992 commenter number and public docket document number for the comment letter. You may use the "1992 Comments Matrix" to respond to questions 2 and 3, in

⁶ We are requesting that you save the document to the Excel 97-2003 Workbook (*.xls) version of Excel so that other members of the public who do not have access to more recent versions of Excel can view your comments.

Part V, below. Specifically, you may provide your comments in Column C, and your (optional) contact information and information about the interest group you belong to, or represent in Column D.

Note that we have sorted the comment summaries topically in the "1992 Comments Matrix", based on: the Interim Rule Federal Register page and column number; the regulatory part, subpart, section and subsection number each comment relates to; and the docket number assigned to each comment document.

When a commenter made the same comment more than once, we have summarized the comment only once in the "1992 Comment Matrix", sorted by the first section referenced by the commenter, and have included cross-references within the summary to the other regulatory sections referenced by the commenter. For example, one commenter commented multiple times on the need to avoid double counting of amounts claimed.

We also have included certain clarifying explanatory information at the end of some of the comment summaries in the "1992 Comments Matrix". This information, which is not reflected in the 1992 Comments, is in brackets and italics.

In both matrix documents, we have locked the text we have provided, such as the Notice of Inquiry questions and

1992 Comment summaries. This is to protect against inadvertent changes to that information while you are entering your comments in the document.

If you need more space in a cell you wish to enter text into, you may expand the width of each column and the height of each row.⁷ You may also adjust the font size of the text.

After you have entered your comments and contact information, save the matrix document again. Then submit the matrix document to the public docket using any of the methods discussed in ADDRESSES. If you choose to upload the matrix document to the public docket electronically, follow the instructions for submitting comments to the public docket electronically provided above in the section of this Notice of Inquiry titled "Public Participation and Request for Comments" under "Submitting comments".

V. NOTICE OF INQUIRY QUESTIONS

A. Question concerning your interest in the rulemaking:

⁷ To change the width of columns, position the mouse pointer on the right boundary of a column letter heading until it turns into a double-sided arrow. Drag until the column is the width that you want. To change the row height, position the mouse pointer on the bottom boundary of the row number heading until it turns into a double-sided arrow. Drag until the row is the height that you want. You can find more information about changing column widths and row heights in Excel help.

Question 1. What interest group do you belong to or represent?

Discussion: Knowing what interest group a commenter belongs to or represents helps us understand the comments we receive. This information, however, is not always clear from the letterhead used by the commenter. We, therefore, invite you to let us know what interest group you belong to, or represent, by responding to question 1. For example, you may be, or represent, a State government or political subdivision, an Indian tribe, a Federal, State or Indian tribe natural resource trustee, an oil spill response organization, or other public or private claimant; a responsible party or guarantor; a facility owner, operator, licensee, lessee or permittee; a vessel owner, operator or demise charterer; an industry association; or other interested individual, business, public interest association, agency of the U.S. Government or other public agency.

B. Questions concerning the 1992 Comments on the Interim Rule:

Question 2. What, if any, issues raised in the 1992 Comments do you believe it would be helpful for the Coast Guard to address in the SNPRM?

Question 3. What, if any, issues raised in the 1992 Comments do you believe no longer need to be addressed?

Discussion: The Coast Guard has reviewed and considered the 1992 Comments on the Interim Rule. We believe that some of the issues raised by the 1992 Comments reflected the public's lack of experience with the Claims Procedures at that time, and have been resolved through implementation of 33 CFR part 136 and the public's increased familiarity with the OPA'90 claims process.

We do not plan to revisit issues raised in the 1992 Comments that appear to have been resolved unless the public expresses interest in our doing so. We, therefore, invite you to review the 1992 Comments and alert us to issues you would like us to address. We are particularly interested in hearing from you if you submitted a 1992 Comment, if you have been an OPA'90 claimant to the Fund or a responsible party or guarantor, or if you have other experience with the OPA'90 Claims Procedures or the OCSLAA Rule.

If you respond to either question 2 or 3, please identify each of the 1992 Comments you are responding to, and provide your views on why you believe it would be helpful for us to address the issues in the rulemaking, or why it is no longer necessary for an issue to be addressed

in the rulemaking. You may use the "1992 Comments Matrix" to respond to questions 2 or 3.

C. Questions concerning the Claims Procedures (33 CFR part 136):

1. Rule organization and other clarifications to the Claims Procedures -

Question 4. What organizational changes would improve the Claims Procedures (33 CFR part 136)?

Question 5. What, if any, regulatory gaps would you like us to address in the Claims Procedures (33 CFR part 136)?

Question 6. Are there procedures in the Claims Procedures (33 CFR part 136) that you would like us to streamline?

Question 7. Are there procedures in the Claims Procedures (33 CFR part 136) that you would like us to clarify or explain in greater detail in the regulations?

Question 8. What, if any, terms used in the Claims Procedures (33 CFR part 136) would you like us to define or clarify?

Discussion: Executive Order (E.O.) 12866 requires that regulations be simple and easy to understand. The goals of these requirements include minimizing the

potential for uncertainty, and ensuring the public understands important regulatory requirements.

The Coast Guard is, therefore, considering amendments to the Claims Procedures, to clarify the presentation and address regulatory gaps. For example, we are considering reorganizing the rule along certain lines, possibly including the following:

- Moving the source designation and claims advertising regulations, which currently appear in subpart D, earlier in the rule to a new subpart B, to reflect the chronological order in which matters arise following an oil spill incident;
- Creating a separate subpart for natural resource damage trustee claims under 33 U.S.C. 2702(b)(2)(A), which may only be brought by Federal, State, Indian tribe, and certain foreign trustees (see 33 U.S.C. 2707);
- Adding a separate subpart for responsible party claims, which are not expressly addressed in the current rules;
- Creating a separate subpart for the claims determination and reconsideration procedures; and

- Consolidating certain generally-applicable requirements in subpart A.

Other possible amendments to the regulatory text might include: stating the procedures in simpler terms (plain language); explaining other requirements in greater detail; and adding or amending the definitions for terms that may not be well understood. The Coast Guard invites you to comment on whether these types of clarifying changes would be helpful, and on any other recommendations you might have for clarifying the Claims Procedures.

2. Claims Procedures regulatory deadlines -

Question 9. Have you been able to work within the regulatory deadlines in the Claims Procedures (33 CFR part 136)?

Question 10. Do you have a comment on changing the deadlines in § 136.115(b) and § 136.115(d) to 90 days after mailing by the Director, NPFC?

Discussion: The Claims Procedures establish a number of different deadlines. Some of the deadlines are required by OPA'90, such as those in 33 U.S.C. 2714 and subpart D of the Claims Procedures concerning source designations and advertising. Changes to these statutory deadlines would require a change in the law. The statutory deadlines are, therefore, outside the scope of this regulation.

Other Claims Procedures deadlines, however, are entirely regulatory. For example, § 136.115(b) establishes a 60-day regulatory deadline for claimants to accept an offer of settlement by the Fund, and § 136.115(d) establishes two deadlines, a 60-day or 30-day deadline, for the NPFC to receive requests for reconsideration.

We are considering changing these regulatory deadlines to 90 days after mailing by the Director, NPFC, to simplify the rule and minimize confusion between these deadlines. The Coast Guard, therefore, invites your views on whether the Claims Procedures deadlines are clear, and whether the changes we are considering to the deadlines in § 136.115, or to any other regulatory deadlines in part 136, would be helpful. (We are not requesting comment on any statutory deadline.)

3. Claims submission requirements -

Question 11. Do you have any comment on amending § 136.105(c) to allow claimants to submit claims that are not "signed in ink" originals?

Question 12. What, if any, recommendations do you have on limits the Coast Guard could consider placing on claims submissions to ensure their authenticity and reliability?

Question 13. What, if any, other changes to the claims submission requirements in subparts A and B of the Claims Procedures, (33 CFR part 136) are needed or would be helpful?

Discussion: The Claims Procedures (§ 136.105(c)) require that claim submissions be "signed in ink". The Interim Rule, however, pre-dated substantial legal precedent recognizing the authenticity and reliability of electronic documents, such as scanned documents, which can be submitted almost instantly by electronic mail, and facsimile copies of original documents.

The Coast Guard is, therefore, considering removing the "signed in ink" requirement (§ 136.105(c)) in order to take advantage of technological advances in communications. Claimants would still be required to certify that the claim accurately reflects all material facts. The Coast Guard invites your views on this change.

The Coast Guard also invites your views on whether any other changes to the other claims submission requirements in subparts A and B of the Claims Procedures are needed or would be helpful.

4. Claims determination and reconsideration procedures

-

Question 14. Do you have any comment about removing the requirement in § 136.115(c) to send claims denials by certified or registered mail?

Question 15. What, if any, other comments do you have on the claims determination and reconsideration procedures?

Discussion: The Claims Procedures (§ 136.115(c)) state that the NPFC will send claims denial determinations to claimants by certified or registered mail. This increases the Coast Guard's administrative costs. It also may not be helpful to the public since claims determinations can be, and are now also, transmitted electronically (e.g., electronic mail and facsimile transmissions).

Therefore, although the Coast Guard would continue to send all determinations to claimants by reliable means, including by U.S. mail, we are considering removing the certified or registered mail requirement from the regulations, and we invite your comment on this change. The Coast Guard also invites you to comment on any other aspect of the claims determination and reconsideration procedures.

5. Distinguishing the different categories of claims due to injury, loss or destruction to, or loss of use of, natural resources -

Question 16. What, if any, clarification is needed concerning the distinctions in OPA'90 and the Claims Procedures between the different categories of claims resulting from the injury, loss or destruction to, or loss of use of, natural resources due to an oil spill incident?

Discussion: Under OPA'90 (33 U.S.C. 2702(b)(2)), claims may be made to the Fund for four distinct categories of damages due to injury, loss or destruction to, or loss of use of, natural resources as a result of an oil spill incident: (1) damages for loss of subsistence use of natural resources, which may only be claimed by a person who so uses natural resources which have been injured, destroyed or lost, without regard to the ownership or management of the resources; (2) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of natural resources, which are recoverable by any claimant; (3) damages for injury, loss or destruction to, or loss of use of, natural resources as a result of an oil spill, which can only be recovered by Federal trustees, State trustees, Indian tribe trustees, and certain foreign trustees; and (4) damages equal to the net loss of government revenue (i.e., taxes, royalties, rents, fees, or net profit shares) due to the injury, destruction, or loss of natural resources, which

can only be recovered by the Government of the United States, a State or a political subdivision thereof.⁸ Issues have, however, come up over the years indicating that the distinctions between these claims categories, particularly the distinctions between subsistence use loss and other claim categories, may not be well understood.

Two courts have considered what constitutes a subsistence use loss of natural resources under OPA'90. See *In re Cleveland Tankers, Inc.*, 791 F. Supp. 669 (E.D. Mich. 1992), and *Sekco Energy, Inc. v. M/V Margaret Chouest*, 820 F. Supp. 1008 (E.D. La. 1993). Both courts found that this type of damage may be claimed only by persons who are dependent on the injured, destroyed, or lost natural resources to obtain the minimum necessities of life, such as food, water, and shelter, and does not include commercial uses of natural resources.

The NPFC has further determined that loss of subsistence use of natural resources damages may only be compensated by the Fund to individuals and households who can show that they rely on the natural resources which have been injured, destroyed, or lost due to an oil spill incident, to meet their minimum necessities of life; but

⁸ As noted in Question 20, below, claims for damages equal to the loss of profits or impairment of earning capacity, and the net loss of government revenue, may also be brought if due to the injury, destruction, or loss of real or personal property.

that claims for the lost commercial use of natural resources (including the use of natural resources for barter) may be compensated by the Fund to any claimant who can show a loss of profits or impairment of earning capacity due to the injury, destruction, or loss of the natural resources as a result of an oil spill incident. In addition, the NPFC has determined that recreational or public use losses due to the injury, destruction, or loss of natural resources as a result of an oil spill incident may only be claimed as a measure of damages in natural resource damage claims brought by Federal, State, Indian tribe, and certain foreign trustees; and that claims for the net loss of revenues due to the injury, destruction, or loss of natural resources as a result of an oil spill incident, may only be brought by the United States, a State or a political subdivision of a State.

The Coast Guard invites you to comment on whether clarifications are needed in the regulatory text to further explain these distinctions and the proof requirements for each of these categories of claims.

6. The public notice and comment exception for certain natural resource damage trustee claims -

Question 17. Do you have any views on whether claims that fall under the exception in OPA'90 33 U.S.C.

2712(j)(2) to the public notice and planning requirement of OPA'90 33 U.S.C. 2706(c), should be further defined or separately addressed in the Claims Procedures (33 CFR part 136)?

Discussion: OPA'90 (33 U.S.C. 2706(c)(5)) requires that Federal, State, Indian tribe, and foreign trustees develop and implement plans for the restoration rehabilitation, replacement, or acquisition of the equivalent of the natural resource under their trusteeship "only after adequate public notice, opportunity for a hearing, and consideration of all public comment." OPA'90 (33 U.S.C. 2712(j)(1)) in turn provides that, with one exception, amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources *only* in accordance with a plan adopted under OPA'90 (33 U.S.C. 2706(c)).

OPA'90 (33 U.S.C. 2712(j)(2)), however, permits obligations from the Fund without a plan adopted pursuant to OPA'90 (33 U.S.C. 2706(c)(5)) "in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action" (referred to as "emergency restoration"). The current Claims Procedures do not address this exception to the planning

requirement. The Coast Guard, therefore, invites your views on whether, and how, the planning exception in OPA'90 (33 U.S.C. 2712(j)(2)) should be addressed in the Claims Procedures.

7. Damage assessment costs -

Question 18. What, if any, clarification is needed concerning the distinction in § 136.105(e)(8) of the Claims Procedures (33 CFR part 136) between (1) the reasonable costs incurred by a claimant in assessing the damages claimed (damage assessment costs), which may be compensated by the Fund, and (2) attorney's fees or other administration costs associated with preparation of a claim, which are not compensable by the Fund?

Question 19. What criteria might the Coast Guard use to determine if costs are compensable damage assessment costs, or clearly not compensable attorney's fees or other administration costs associated with preparation of a claim?

Discussion: Under OPA'90 and the Claims Procedures, the reasonable costs incurred by a claimant in assessing the damages claimed are compensable by the Fund. This may, for example, include the reasonable cost of an accountant, scientist or other expert to determine, measure, or otherwise quantify, the extent of economic losses resulting

from destruction of real or personal property, or the extent of injury to, destruction of, loss of, or loss of use of, a natural resource, or the extent of lost profits. In addition, for natural resource damage trustee claims, the NPFC has determined that assessment costs include the reasonable cost of determining the restoration actions needed, including the reasonable administrative and legal costs of damage assessment and restoration planning. OPA'90 and the Claims Procedures, however, do not authorize compensation from the Fund for the costs of attorney's fees and other administrative costs associated with preparation of a claim.

The Coast Guard is considering clarifying damage assessment costs in the Claims Procedures and invites your comment.

***8. Other comments on the Claims Procedures for
different categories of claims -***

Question 20. What, if any, other comments do you have about the requirements in subpart C of the Claims Procedures (33 CFR part 136) concerning the different categories of claims that may be compensated by the Fund under OPA'90?

Discussion: In addition to the damage claims categories resulting from injury to, destruction of, loss

of, or loss of use of, natural resources, claims resulting from an oil spill incident may be made to the Fund for:

(1) removal costs incurred due to an oil spill incident, which are recoverable as provided in OPA'90 (33 U.S.C. 2702(b)(1)), including by any person for acts taken by the person which are consistent with the National Contingency Plan; (2) damages for injury to, or economic losses resulting from destruction of, real or personal property damages, which are recoverable by a claimant who owns or leases that property; (3) damages equal to the net loss of government revenues due to the injury, destruction, or loss of real property or personal property, which can only be recovered by the Government of the United States, a State or a political subdivision thereof; (4) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property or personal property, which are recoverable by any claimant; and (5) damages for the net costs of providing increased or additional public services during or after oil spill removal activities, which may be recovered by a State or political subdivision. The Coast Guard invites your views on any issues concerning the regulatory requirements in subpart C of the Claims Procedures for these different OPA'90 claims categories.

9. Source designations and claims advertising -

Question 21. What, if any, comments do you have on the requirements in subpart D of the Claims Procedures (33 CFR part 136) concerning source designations and claims advertising?

Discussion: Subpart D of the Claims Procedures sets forth the procedures for designating the source of an incident (i.e., a vessel or facility) and for notifying the responsible party and guarantor of the source, when known, about the designation, and the requirements concerning the type, geographic scope, frequency, initiation and duration of claims advertising following an oil spill incident. A number of 1992 Comments concerned these requirements. The Coast Guard is, therefore, interested in your views on whether these procedures are clear, or whether further clarification is needed to these requirements.

D. Questions concerning removal of the OCSLAA Rule (33

CFR part 135) from the Code of Federal Regulations:

Question 22. What, if any, comments do you have on whether the OCSLAA Rule (33 CFR part 135) should be removed from the Code of Federal Regulations?

Question 23. What, if any, provisions of the OCSLAA Rule (33 CFR part 135) would it be helpful to keep in the Code of Federal Regulations?

Discussion: As discussed above, at Part III.B. and Part III.C., OPA'90 revoked OCSLAA, but OPA'90 (33 U.S.C. 2751(b) and 33 U.S.C. 2716(h)) preserved the force and effect of certain regulations under prior law, including the OCSLAA Rule's evidence of financial responsibility regulations, until they were superseded by regulations contemplated by OPA'90. The Interim Rule, therefore, struck certain provisions of the OCSLAA Rule to eliminate obvious conflicts with the OPA'90 Claims Procedures, but left removal of the remaining provisions of the OCSLAA Rule for future rulemaking.

Since 1992, a number of regulations have been promulgated that supersede, or appear to overlap with, the remaining provisions of the OCSLAA Rule. The Coast Guard is consequently considering whether to further amend the OCSLAA Rule or remove its remaining provisions entirely from the Code of Federal Regulations. We, therefore, invite you to comment on whether the OCSLAA Rule should be removed from the Code of Federal Regulations, in whole or in part.

**E. Questions concerning the regulatory analysis for
this rulemaking:**

**1. Claims Procedures (33 CFR part 136) - Economic
Analysis-**

If you have experience with the Claims Procedures, we invite you to respond to the following questions. Please provide as much quantitative data and source documentation as possible in support of your responses to each question, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

Question 24. How much time did you spend and what were your costs associated with reading the Claims Procedures (33 CFR part 136) regulations?

Question 25. If you have experience as a claimant to the Fund, how much time did you spend and what were your costs associated with preparing each of your claims?

Question 26. If you have experience as a claimant to the Fund, how much time did you spend and what were your costs associated with responding to any requests by the NPFC for supplemental or clarifying information concerning each of your claims?

Question 27. If you have experience as a claimant, how much time did you spend and what were your costs associated with any claim reconsideration requests?

Question 28. If you have experience as a responsible party or guarantor, how much time did you spend and what were your costs associated with preparing and publishing the required advertisement?

Question 29. What, if any, provisions of the Claims Procedures have you found to be burdensome or costly, and what were your burdens or costs?

Question 30. If you have ideas for specific amendments to the Claims Procedures that could reduce your burden or costs, what are they and to what extent would they reduce your burden or costs?

2. Claims Procedures (33 CFR part 136) - Small Entities

Analysis -

If you are a small entity (i.e., a small business or not-for-profit organization that is independently owned and operated and is not dominant in the field, or a governmental jurisdiction with a population of less than 50,000) with experience with the Claims Procedures, we invite you to respond to the following questions. Please provide as much quantitative data and source documentation as possible in support of your responses to each question, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

Question 31. If you have experience with the Claims Procedures (33 CFR part 136), what industry (e.g., North American Industry Classification System (NAICS) Code) and what type of small entity do you represent?

Question 32. If you have experience with the Claims Procedures (33 CFR part 136), what, if any, provisions of the Claims Procedures (33 CFR part 136) are burdensome or costly because you are a small entity, and what were your burdens or costs?

Question 33. If you have ideas for specific amendments to the Claims Procedures (33 CFR part 136) that could make them more flexible to accommodate your special needs as a small entity, what are they and to what extent would they reduce your burden or costs?

**3. Removal of OCSLAA Rule (33 CFR part 135) -
Economic Analysis -**

If you have experience with the OCSLAA Rule, we invite you to respond to the following question. Please provide as much quantitative data and source documentation as possible in support of your responses, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

Question 34. What, if any, provisions of the OCSLAA Rule (33 CFR part 135) have you found to be burdensome or costly, and what were your burdens or costs?

**4. Removal of the OCSLAA Rule (33 CFR part 135) -
Small Entities Analysis -**

If you are a small entity (i.e., a small business, not-for-profit organization that is independently owned and operated and are not dominant in the field, or a governmental jurisdiction with a population of less than 50,000) with experience with the OCSLAA Rule, we invite you to respond to the following questions. Please provide as much quantitative data and source documentation as possible in support of your responses to each question, so that we may incorporate your experience into the regulatory analysis for this rulemaking.

Question 35. If you have experience with the OCSLAA Rule (33 CFR part 135), what industry (e.g., NAICS Code) and what type of small entity do you represent?

Question 36. If you have experience with the OCSLAA Rule (33 CFR part 135), what, if any, provisions of that part have you found to be burdensome or costly because you are a small entity, and what were your burdens or costs?

Discussion: The Coast Guard will be conducting a regulatory assessment for this rulemaking. To ensure we have the best information for the assessment, we invite you to respond to questions 24 through 36. Please identify the specific provisions that you think would affect you. Please describe the impacts, and quantify any costs and/or benefits of the provisions to the extent possible.

F. Other issues:

Question 37. Are there any issues concerning this rulemaking that were not mentioned above or in the 1992 Comments, that you would like us to consider?

We will review and analyze all public comments received in order to develop the SNPRM.

This notice is issued under authority of 33 U.S.C. 2713(e), 33 U.S.C. 2714(b), and 33 U.S.C. 2716(h).

Dated: 10/26/11

William R. Grawe
Acting Director, National Pollution Funds Center
U.S. Coast Guard

[FR Doc. 2011-28189 Filed 10/31/2011 at 8:45 am;
Publication Date: 11/01/2011]